

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DONALD A. WINBORNE,

Plaintiff,

v.

**MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,**

Defendant.

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CASE NO. 8:08CV400

ORDER

This matter is before the Court on the Defendant's Motion to Dismiss (Filing No. 13) based upon the untimely filing of Plaintiff's Complaint. In response, Plaintiff's counsel consents to the Defendant's Motion to Dismiss (Filing No. 17). Counsel for the Plaintiff concedes that Plaintiff failed to file a timely claim as required by 42 U.S.C. § 405(g) and further states that counsel has been unable to contact Plaintiff since the filing of this action. Accordingly,

IT IS ORDERED:

1. The Defendant's Motion to Dismiss (Filing No. 13) is granted;
2. The Complaint and all claims in this action are dismissed with prejudice; and
3. The parties shall pay their own costs and attorneys' fees.

DATED this 2nd day of December, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge